

# TENNESSEE REGULATORY AUTHORITY

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Lynn Greer, Chairman  
Sara Kyle, Director  
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460 James Robertson Parkway  
Nashville, Tennessee 37243-0505

August 26, 1997

Mr. William F. Caton  
Acting Secretary  
Federal Communications Commission  
1919 M Street, NW., Room 222  
Washington DC 20554

RE: Notice of Proposed Rulemaking-Implementation of the Subscriber Carrier  
Selection Changes Provisions of the Telecommunications Act of 1996-  
CC Docket No. 94-129

Dear Mr. Caton:

Enclosed are the original and fifteen copies of the Tennessee Regulatory Authority comments in the above docket. Please date stamp one copy and return it in the enclosed self-addressed stamped envelope. We are also submitting two additional copies to the Common Carrier Bureau.

Sincerely,

David Waddell  
Executive Secretary

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Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, DC 20554

In the Matter of

Implementation of the  
Subscriber Carrier Selection Changes Provisions  
of the Telecommunications Act of 1996

CC No. 94-129

Policies and Rules Concerning  
Unauthorized Changes of Consumers' Long  
Distance Carriers

**COMMENTS OF THE TENNESSEE REGULATORY AUTHORITY ON THE  
NOTICE OF PROPOSED RULEMAKING**

**INTRODUCTION**

The Tennessee Regulatory Authority ("TRA") is the state agency with the statutory responsibility of overseeing telecommunications within Tennessee. The TRA wishes to inform the Federal Communications Commission ("Commission") that it supports the Commission's initiative to revisit its 1995 Report and Order regarding the unauthorized switching of a consumer's preferred interexchange carrier ("PIC"), or more properly identified in today's environment as simply a preferred carrier ("PC"). The practice of switching a consumer's PC without authorization, sometimes referred to as "slamming," is a growing consumer problem in Tennessee and is distorting the beneficial effects of the move toward competition in the telecommunications sector. Slamming is a consumer abuse which the marketplace is failing to correct.

Federal and state actions are required to address the market failure taking place concerning slamming in the telecommunications sector. The growing number of consumer complaints received by both the Commission and the TRA indicates that the present rules

for the verification of PC orders and the penalties for offending carriers enacted by the Commission in 1995 are not adequately protecting the public. Stronger regulatory actions are required to stem the tide of consumer complaints regarding slamming in the long distance market and prevent similar consumer abuses from occurring in the emerging competitive local market. Specifically, the TRA believes that the Commission's existing penalty for offending carriers is not an adequate deterrent to prevent slamming. The TRA further believes that increased penalties, such as described below, will not harm competition but on the contrary will improve the behavior of carriers and decrease the level of confusion and frustration in the telecommunications marketplace.

### **Viability of the "Welcome Package" Verification Option**

The TRA supports the National Association of Attorneys General's ("NAAG") recommendation to change the verification option set forth in Section 64.1100(d). This option is one method used to verify telemarketing sales. This verification option requires interexchange carriers ("IXCs") to send each new customer an information package including a postcard which the customer can use to deny, cancel or confirm the PC change order. The consumer's service is changed by the IXC within 14 days unless the consumer returns the postcard to the IXC indicating they refuse the service. The TRA believes this technique is a "negative option" approach because the consumer is switched automatically to another carrier unless the consumer returns the postcard denying the service. This negative option approach has caused consumer confusion and led to slamming complaints in Tennessee.

A better approach is one where the card must be returned by consumers in order to switch their service from one carrier to another. This "positive option" ensures that the consumer has given consent for the service before the switch of service is activated. The TRA does not believe that this extra precaution will stifle competition but will serve as one of the measures needed to reduce slamming. Of the slamming complaints that we have investigated where the negative option was utilized by an IXC, consumers were confused by welcome packages and did not understand that they were required to return the postcard to prevent their service from being switched. Many of these consumers even deny that they told a telemarketer that they were interested in switching their long distance service. Later when the consumers received the welcome package, they felt like it was still another attempt to market them by the long distance company and they simply discarded the package. In these instances, consumers were switched to another carrier without their permission.

The TRA does not believe that changing this option will harm carriers' efforts to win new customers. We believe a consumer will take the time to sign and return a letter of authorization ("LOA") in order to switch telecommunications carriers especially if there is a promise of lower prices, the potential of receiving better service or some other benefits.

## **PC Freezes**

A PC freeze is an important added layer of security for consumers to prevent their service from being changed without their permission. The TRA believes that the PC freeze option should be available to all citizens at no cost, similar to a 900 block. Specific minimum guidelines for removing a freeze should also be outlined in the proposed rules in order to ensure a minimum level of continuity across the nation. The TRA suggests that a consumer be in charge of either requesting or removing their PC freeze by contacting their local exchange carrier either over the telephone or in writing.

With regard to concerns over the potential anticompetitive implications of the PC freeze in the local market, the TRA supports the concept of a two-PC freeze process with one freeze for local service and one for long distance service. Additionally, a consumer's decision to freeze his/her PC should be seamless when changing local carriers. When consumers change local service providers, their existing long distance carrier freeze should automatically be established with their new local provider.

## **Liability of Subscribers to Carriers, Section 258(b)**

An important principle of justice is that the punishment fit the crime. As pointed out by NAAG, the present penalty for slamming in effect rewards the wrongdoer by allowing the offending carrier to keep the toll revenue generated during the time when a consumer's service is slammed. This practice subverts justice and provides an incentive for carriers to slam consumers.

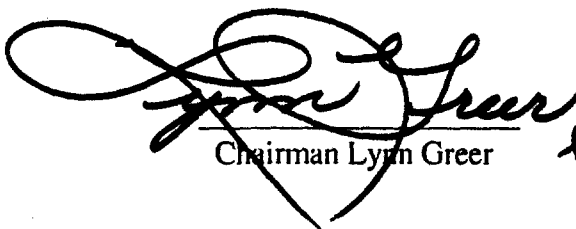
Stronger penalties for slamming is an important public policy tool to curb this consumer abuse. The TRA supports option (c) for carriers found guilty of slamming. Option (c) would absolve the consumer from having to pay any toll charges to the carrier found guilty of failing to complying with the Commission's new PC Verification Rules. This new penalty would provide a much needed incentive to carriers to ensure that they follow established guidelines for verifying change orders in order to prevent them from having to waive toll charges of slamming victims.

NAAG also recommends five (5) safeguards to the verification rules for switching a consumer's PC. The TRA supports these modifications with an additional safeguard. Resellers should make clear their relationship with their underlying carrier in order to avoid confusion when marketing their service. Some consumers have informed the TRA that they were misled by resellers into thinking the new service was still, for example, AT&T service when in fact it was resold AT&T service. Consumers have informed us that they would not have switched their service if they had been given the proper information.

## Liability of Carriers to Subscribers

The TRA supports the FCC's "make whole" approach as it relates to the premiums or special benefits consumers may lose as the result of being slammed. Offending carriers should be required to compensate the consumer an equal amount of the benefits lost under the conditions below. We recommend a "two option" approach on adjustments for slamming victims. This approach is designed to put the consumer in charge and allow them the prerogative of selecting the adjustment option that best works for them. The first option would be for the carrier involved in the slam to waive all toll charges that consumers generated during the period of the violation. The second option would allow the consumer to be "made whole" for any premiums or bonuses they would have received from their PC as if the unauthorized switching did not occur. Under this option, however, the consumer would agree to pay for toll charges to the slamming carrier for the calls incurred during the period the slam but only at the rate the consumer would have been billed for the identical calls from their PC. In other words, the "make whole" approach would be applicable if the consumer decides to pay the offending carrier the toll charges they would have paid to their PC. If toll charges are waived by the offending carrier, it does not seem reasonable to require additional compensation be awarded to the consumer for loss of premiums. This strategy allows consumers to decide whether they want a full adjustment of all toll charges or receive compensation for loss of any premiums connected with their previous service. This approach also encourages negotiation between the offending carrier and the consumer to settle their differences. Finally, offending carriers should be required to inform the consumer that they have the right to appeal their disputes to the appropriate regulatory agency for adjudication.

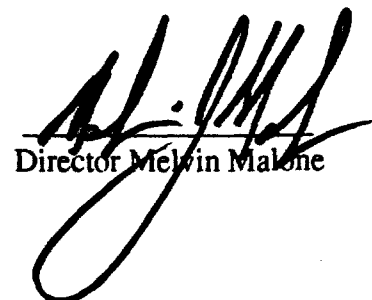
Respectfully submitted this 25th day of August, 1997,



Chairman Lynn Greer



Director Sara Kyle



Director Melvin Malone